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SUBJECT: Panama's National Assembly Debating Property Law

REF: 2009 PANAMA 657

SUMMARY

**¶11.** (SBU) American citizens in Panama reacted strongly to proposed legislation that would change the rules for recognizing rights of possession. As currently worded and depending upon possible implementation, domestic and foreign holders of rights of possession may have to pay the government for their right of possession, even though the current holder already paid the previous holder for the right of possession. Post is actively engaging the Government of Panama (GOP) to protect the property rights of American citizens.

WHO OWNS THE LAND IN PANAMA?

**¶12.** (U) Approximately one-third of all land in Panama is titled and the majority of that land is in or near Panama City. The rest of the land is owned by the government, but natural or juridical persons can purchase a locally approved right of possession or a cabinet approved concession to the government owned land. A right of possession is bought and sold in a similar way to titled land, but the right of possession is easily challenged by others who believe they have a right of possession to the same land. Due to the frequently corrupt actions of the local officials in charge of rights of possession and a weak judiciary (ranked 103 out of 133 countries on judicial independence for the 2009-2010 Global Economic Forum's Global Competitiveness Report), the rights of possession system and an associated path to title rights of possession is widely recognized as broken.

PROPOSED LEGISLATION

**¶13.** (U) The Martinelli Administration proposed a new law for recognizing rights of possession and titling coastal land. (Coastal rights of possession fall under a separate legal and regulatory framework than non-coastal land.) The legislation, proposed Law 71 of 2009, would mandate holders of a right of possession for coastal lands to pay the government for the right of possession at a to-be-proposed fixed price and change the process for titling a right of possession. The alleged motivation for the new law is to raise more revenue and to punish land speculators that obtained rights of possession in non-legal manners. The legislation was extensively modified during the first National Assembly debate on October 15. The second of three required National Assembly debates is expected early in the week of October **¶126.**

## AMERICAN CITIZEN REACTION

**¶4. (SBU)** Many in the American community in Panama reacted angrily and quickly to the legislation. For the past week, the Embassy received approximately a dozen inquiries per day from Americans concerned about their property rights. The core argument is that Americans were encouraged by the GOP to invest and live/retire in Panama. Now the GOP wants them to pay again for their land (the right of possession) and is changing the rules on how to title the land. In addition, the path to titled land is through a corruption ridden bureaucracy that reportedly only titled twelve properties in **¶2008**. Combined with the weak judiciary, many Americans are feeling ripped off. The intensity of feelings will be largely decided by the price per hectare demanded by the government. One price circulating in the National Assembly has a \$100 fee per hectare for natural persons and up to \$5,000 per hectare for juridical persons. However, a leaked Ministry of Finance figure is \$40,000 per hectare. The divergence in proposed price is causing much of the anxiety.

**¶5. (SBU)** Besides contacting the Embassy, the American community is organizing in some locations and many are directly contacting the GOP. A fund raising campaign to hire a Panamanian lobbyist started in Bocas del Toro - a group of Caribbean islands with significant numbers of Americans who hold rights of possession. One American told econoff that she sent emails about the proposed legislation to all her Members of Congress, President Obama, Secretary Clinton, and Members of Congress who voiced support for the United States-Panama Free Trade Agreement (FTA). We do not anticipate she was the only American citizen to reach out to U.S. politicians.

**¶6. (U)** The Panamanian reaction is also intense. The leading Panamanian business and environmental organizations sent a letter to President Martinelli in opposition to the proposed legislation and there have been several articles in the leading Panamanian newspapers questioning the proposed law.

## EMBASSY ACTIONS

**¶7. (SBU)** We have informed senior GOP leadership of the reaction of the American community in Panama after the first debate and requested a GOP POC for American citizens to contact. On October 23, the Ambassador will discuss proposed Law 71 with VP Varela, noting that American citizen reaction to the proposed legislation risks adding a further complication to the passage of the FTA and may spawn arbitration cases out of the United States Bilateral Investment Treaty. A public statement expressing concern over proposed Law 71 will be considered if the reaction from the American community grows and if the legislative process does not correct aspects of the legislation that affect American citizens. A stronger warning on purchasing property in Panama has been added to the draft Country Specific Information Sheet, now awaiting clearance in DC.

**¶8. (SBU)** Embassy engagement with the National Assembly is planned. Econoff scheduled a meeting with the Deputy Blandon, National Assembly sponsor of the legislation and President of the National Assembly Housing Committee. Poloffs will inform other influential Deputies of the effect of proposed Law 71 on Panama and American citizens.

## COMMENT

19. (SBU) Proposed Law 71 is adding to the general impression of a decline in the reputation of Panama as a safe country to make investments. Manzanillo International Terminal, a \$500 million port investment, and AES, who will shortly have a \$900 million cumulative investment in Panamanian hydro-electric generation plants, have recently had their concession unilaterally changed by the GOP. See ref A.

STEPHENSON